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SECURITY INFORMATION

OGC HAS REVIEWED.

25 October 1951

*JSW Note: put. 7
Do you want to
compile some research
problems against our
hoped for re-
creates in staff*

*This is being done. LPH
JSW
LPH*

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MEMORANDUM FOR THE RECORD

SUBJECT:

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1. Progress under this contract has been unsatisfactory and the Procurement Office is holding up payment of vouchers in the amount of approximately \$6,000, which have been submitted by the contractor. The estimated cost of the contract is approximately \$200,000. The contractor is in financial difficulties because of lack of operating capital and has filed a petition for arrangement with creditors under Chapter 11 of the Bankruptcy Act (11 USC

2. It is the desire of the operational and procurement offices to have the work completed by another contractor. However, the question is raised whether the 1951 funds obligated under this contract would thereby be lost and 1952 funds required for the new contract. It is understood that some doubt has been expressed on this point by members of the Fiscal and Finance Divisions.

3. I have discussed the question informally with the General Counsel's Office of GAO, which advises that it is settled that the old funds may be used where there is termination for default under a fixed-price contract and purchase against the account of the contractor. The Digest Section of GAO has made a search but has been unable to find any precedent for the case of cost-plus contracts. However, it seems that the same result would be reached, although it might be argued that there is a distinction since there is no purchase against the account of the contractor. Support for this conclusion is found in 2 Comp. Gen. 130, where a project order had been issued within the Government, and the original funds were held still to be available for purchase elsewhere when the requisitioned agency was unable to furnish the equipment.

4. A contrary result was reached in 24 Comp. Gen. 555, where the Comptroller held that the old appropriation was not available since the contract was terminated not for default but because of the inability of the Government to obtain the agreed priority rating for materials needed in performance. Under such circumstances

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the Comptroller said that the original contract was completely dissolved and the replacement contract had no connection with it. Hence, the appropriation current at the time of the second contract must be charged.

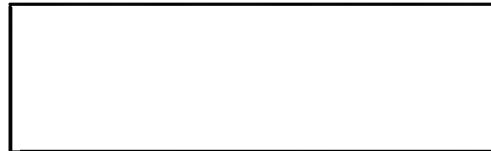
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5. In order to avoid such a result in the [] the termination should be for default and final settlement with [] should not be made earlier than the effective date of the replacement contract.

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6. Since the Contracts Branch does not now have the necessary justification and documentation to support a termination for default, it will first investigate the possibility that these 1951 funds may be used in some other way by the Agency. If not, and if it is important to save them for the requisitioning activity, Contracts will proceed along the lines of termination for default, in consultation with this office.

7. Further investigation could profitably be made on the appropriation point here involved. The principal statute to be construed is found in 31 USC § 712 a which provides that balances of appropriations shall only be applied to the payment of expenses properly incurred or the fulfillment of contracts properly made within the year for which the funds were appropriated.



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Subject ✓
Legal Decision
Vital Document

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